

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231

· ·			www.uspto.gov		
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/015,220	10/26/2001	Michael W. Dae	RADNT-031A	6591	
75	90 12/20/2002				
Robert D. Buyan			EXAMINER		
Stout, Uxa, Buyan & Mullins, LLP Suite 300			HAYES, MICHAEL J		
4 Venture Irvine, CA 92618		ART UNIT	PAPER NUMBER		
			3763	3763	
		DATE MAILED: 12/20/2002			

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)			
,	10/015,220	DAE ET AL.			
Office Action Summary	Examiner	Art Unit			
	Michael J Hayes	3763			
Th MAILING DATE of this communication appears on the cover sheet with the correspondenc address Period for Reply					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). Status					
1)⊠ Responsive to communication(s) filed on <u>26 C</u>	Responsive to communication(s) filed on <u>26 October 2001</u> .				
2a)☐ This action is FINAL . 2b)⊠ Thi	s action is non-final.				
3) Since this application is in condition for allowance except for formal matters, prosecution as to the ments is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims					
4)⊠ Claim(s) <u>1-25</u> is/are pending in the application.					
4a) Of the above claim(s) is/are withdrawn from consideration.					
5) Claim(s) is/are allowed.					
6)☐ Claim(s) is/are rejected.					
7) Claim(s) is/are objected to.					
8) Claim(s) 1-25 are subject to restriction and/or election requirement.					
Application Papers					
9)☐ The specification is objected to by the Examiner.					
10)☐ The drawing(s) filed on is/are: a)☐ accep					
Applicant may not request that any objection to the					
11) The proposed drawing correction filed on		oved by the Examiner.			
If approved, corrected drawings are required in reply to this Office action.					
12) The oath or declaration is objected to by the Examiner.					
Priority under 35 U.S.C. §§ 119 and 120					
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).					
a) All b) Some * c) None of:					
1. Certified copies of the priority documents have been received.					
2. Certified copies of the priority documents have been received in Application No					
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.					
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).					
a) ☐ The translation of the foreign language provisional application has been received. 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.					
Attachment(s)					
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Information	ry (PTO-413) Paper No(s) Patent Application (PTO-152)			
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)	6) Other: .				

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Claims 1-13, drawn to a heat exchange/intra-aortic counterpulsation catheter, classified in class 604, subclass 113.
- II. Claims 14-25, drawn to a method of treating congestive heart failure using a heat exchange/intra-aortic counterpulsation catheter positioned in a patient's aorta and cooling at least 1°C below normothermia, classified in class 604, subclass 500.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as heating and/or cooling body fluids not within a patient's arterial system.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Species

This application contains claims directed to the following patentably distinct species of the claimed invention: species 1 described as inserting a heat exchange/intra-aortic

Application/Control Number: 10/015,220

Art Unit: 3763

counterpulsation catheter into a patient's thoracic aorta and species 2 described as separately inserting a catheter and heat exchanger into a patient's aorta.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Application/Control Number: 10/015,220

Art Unit: 3763

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hayes at (703) 305-5873. The examiner can usually be reached Monday -Thursday, 7:00-4:30, and on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler, can be contacted at (703) 308-3552. The fax number for submitting official papers is (703) 872-9302. The fax number for submitting after final papers is (703) 872-9303.

mjh

17 December 2002

MICHAEL J. HAYES